Declaration of Cristina Banks, Ph.D.

Avon
District Sales Manager Observational Study

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Lamorinda Consulting LLC &
Berkeley Research Group LLC

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I, CRISTINA G. BANKS, Ph.D., hereby declare and state as follows:

1.   The following is based on my personal knowledge and, if called upon to do so, I could and would testify competently thereto.

Introduction

2.   I am a Managing Director at the Berkeley Research Group (BRG) and President and Founder of Lamorinda Consulting LLC ("Lamorinda"). Previously, I was the Principal and Founder of Terranova Consulting Group LLC, and a Senior Vice President for Right Management Consultants.   I have been retained as an independent expert to analyze the Avon District Sales Manager (DSM) position.

3.   I and my staff were retained by Avon Products, Inc. to conduct a study of the actual tasks and activities performed by District Sales Managers (DSMs) in California. We conducted an observational study of 30 California DSMs across districts that differed in sales and order volume, number of leaderships (sales rep leaders), number of sales representatives, and DSM tenure. The purpose of the study was to determine what tasks and activities DSMs actually perform on the job, how much time DSMs spend performing exempt and non-exempt tasks, and whether DSMs are sufficiently similar in the work performed to determine the exempt/non-exempt status of the job on a group basis. I, with input from my staff, was solely responsible for developing the methodology for conducting this study of District Sales Managers. This declaration summarizes my findings with respect to the degree of variation in tasks performed, time spent on groups of tasks, and time spent on exempt and non-exempt work.

4.   To conduct the job analysis according to established practice, we collected information about the job from several sources including company documents, interviews with subject matter experts (SMEs) who are very knowledgeable about the job, interviews with current DSMs, and first-hand observations of DSMs on the job. Based on the information collected, we generated 153 sample tasks in order to capture the range of tasks DSMs may perform on the job. We did not attempt to generate an

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exhaustive list of tasks for this job because based on our experience conducting observational studies and our DSM observations during site-visits, it would be impossible to capture before the fact all of the tasks a DSM would perform. These sample tasks were sufficient to serve as a guide for analyzing the actual tasks we observed DSMs perform in our job study. To make analyzing observations easier, we divided the sample tasks into functionally homogeneous groups called Task Areas consistent with established practice.

5.   The job study revealed unique characteristics of the DSM job which encourage variability in the work performed, the timing of tasks performed, and the amount of time spent in different aspects of the job. These characteristics also promote discretion in the types of tasks performed, when these tasks are performed, and when they take time off to do personal (non-work) things. Most DSMs spend the vast majority of their time working outside of a formal office setting. DSMs do a great bulk of their work in individually-selected locations in the field -- whether it was a coffee shop, a retail store, a park, a parking lot, a restaurant, their homes, their vehicles, a company training facility or other places -- in order to accomplish the tasks they planned for that day in the best places and at the best times. DSMs go where sales representatives and sales rep prospects are and at the times they are available or present. DSMs have no inventory to manage other than product samples in the district, no cash to handle, no product to receive and process, and no employees to manage (except a volunteer or paid district assistant in some districts). They do, however, manage the growth of an ever-changing group of independent sales representatives, assisting sales leaders in their understanding and execution of recruiting strategies to gain new sales representatives, "saving" inactive sales representatives, and developing sales strategies. DSMs serve as the interface between the company and the independent sales representatives, the people who sell Avon's products directly to consumers. DSMs use Avon- and personally-developed materials and business strategies to run their

own "businesses" within their own districts as though it were a separate company, acquiring new sales

representatives and growing the size of the sales representative team in order to increase sales.

6.   Study results also revealed that the DSMs observed differ substantially in how they

approach their job. DSMs vary widely in the tasks they perform and in the amount of time spent on

groups of tasks which I call "Task Areas". (See paragraphs 34 to 41 below.) DSMs differ most with

respect to tasks performed within four primary Task Areas: "Updating Product Knowledge and Sales

Skills," "Developing and Implementing Strategies for Growing Revenue," "Promoting Avon and

Recruiting Representatives" and "On-boarding New Representatives," showing large ranges of time

spent across DSMs (0% to 62.1%, 0% to 44.2%, 0% to 35.7%, and 0% to 35.1%, respectively). Eight of the

17 Task Areas examined showed differences in the percentages of time spent performing tasks of 20

percentage points (one-fifth of a workday) or higher. Only two Task Areas, "Growing the Representative

Base Through Others" and "Managing District Budget" showed consistency across DSMs largely due to

the fact that as a group they spent small amounts of time on those tasks. In sum, the results indicate

that individual DSMs spend vastly different amounts of time on the same group of tasks and thus, DSMs

vary widely in the set of tasks performed during the workday.

7.   DSMs also differed in the percentage of time spent performing exempt and non-exempt

work. The minimum amount of time spent on exempt work was 54.1%, and the maximum amount of

time spent on exempt work was 96.2%, a range of 42.1 percentage points.   Despite the wide variation in

tasks performed and total time spent performing exempt work, all 30 DSMs observed spent the majority

(> 50%) of their time performing exempt work.

8.   Because of the degree of variability found among DSMs in this study, it is not possible to

predict how a particular DSM performs his or her job based on knowledge of what other DSMs do.

Therefore, DSMs should be examined on an individual basis in order to determine the tasks performed

and the amount of time spent performing exempt work for any particular DSM.

Expert Qualifications

9.   I have extensive experience in job analysis, the methodology used to understand how people perform their jobs. I earned my doctorate from the University of Minnesota in Industrial/Organizational Psychology in 1979 with a specialization in psychometrics. I am also a Senior Lecturer at the Haas School of Business at the University of California, Berkeley, where I have taught human resource management including job analysis and work measurement for 35 years. I am an elected Fellow of the Society for Industrial-Organizational Psychology and of the American Psychological Association. Prior to my post at the University of California, I was an Assistant Professor at The University of Texas Graduate School of Business for six years. (A more detailed description of my qualifications is listed in the attached curriculum vitae in Exhibit 1 including a list of all cases in which I have testified).

10.   I have taught job analysis and related subjects, and I have also conducted consulting projects involving job analysis, psychological measurement, test and survey development, and work process analysis, among other things. Over the course of my nearly 40-year career, I have conducted well over one hundred job analyses most of which involved the design and administration of questionnaires and time-and-motion observational studies. I and my staff regularly conduct observational studies and perform job analyses for various purposes, including recruitment, selection, training, compensation and the development of performance management systems. I also regularly conduct observational studies in the context of litigation.

11.   More specifically, I am an expert in the design and implementation of observational studies relevant to wage and hour issues, particularly issues concerning the classification of employees as exempt from federal and state overtime laws, and meal and rest break cases. I have published on the subject of wage and hour compliance and have served as a testifying witness in over 70 wage/hour and discrimination cases. My trial testimony has been on behalf of the defense in four overtime cases

(*Goldman v. RadioShack Corporation, Ramos v. Safeway Stores, Inc., Akaosugi et al. v. Benihana, Peters and Moller v. Catalina Restaurant Group*) and on behalf of plaintiffs in one meal period case (*Savaglio v. Wal-Mart Stores, Inc*.). I was awarded the American Psychological Association's Presidential Citation for Innovative Practice for my job analysis work in wage and hour litigation.

Study Background

12.   Lamorinda[1] (and BRG through its relationship with Lamorinda) was retained to conduct a study of the tasks and activities performed by Avon DSMs in California. I understood that a class action lawsuit had been filed against Avon alleging misclassification of the DSM position, among other things (*Nelson v. Avon Products, Inc.*).   We followed sound scientific methods to conduct an observational study of the DSM position to gather data that are relevant to this case.

13.   To begin the observational study, we first gained a thorough understanding of operations by reviewing company documents including job descriptions, training materials, performance appraisals, operations manuals and organizational charts and company policies. To familiarize ourselves with the issues in this case, I and my staff also read the original Complaint and the Second Amended Complaint. Exhibit 2 lists the company documents and other materials I and my staff reviewed.

14.   Following our review of these documents, we interviewed subject matter experts (SMEs), Avon employees who were very familiar with Avon's operations and the DSM position, to learn more about the tasks performed by DSMs and to validate what we had learned from our document review. We informed Avon of the criteria for selecting SMEs, and Avon supplied us with six SMEs, five Division Managers and one Regional Sales Support Assistant in California who met those criteria. We conducted one three-hour meeting with three SMEs in Pasadena, California on Thursday, October 10,

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[1] Lamorinda Consulting was originally engaged by Avon Products, Inc. Lamorinda's staff joined BRG in February, 2014 and subsequently Lamorinda and BRG jointly completed the work set forth in this declaration.

2013 and a two-hour teleconference with three other SMEs on Thursday, December 19, 2013. We

followed a structured protocol to capture a wide range of information regarding the DSM position in

both meetings. A list of the SMEs who participated in these meetings is provided in Table 1 below.

Table 1: List of Subject Matter Experts

Name	Position	Meeting Date
David Medina	Regional Sales Support Manager	October 10, 2013
Rosario Garcia	Division Sales Manager	October 10, 2013
Eileen Gaskell	Division Sales Manager	October 10, 2013
Ivonne Cabrerra	Division Sales Manager	December 19, 2013
Susan Jensen	Division Sales Manager	December 19, 2013
Jenny Stemmerman	Division Sales Manager	December 19, 2013

15.   As an additional step to our preliminary investigation of the DSM job, we observed and

interviewed six DSMs in three nearby states (Arizona, Nevada and Oregon) during different times of the

workday to collect first-hand information about the kinds of tasks DSMs perform.   These preliminary

observations were necessary to make the observational study reliable and accurate. We chose to

conduct our site visits with DSMs in states outside California because doing so would allow us to observe

DSMs and ask detailed questions about their jobs without having to contact members of the purported

class prior to formal data collection, allowing us to retain all non-plaintiff California DSMs in our pool of

DSMs for the study.

16.   We selected DSMs for site visits who were from different divisions. The specific DSMs

chosen for site visits ensured that we had broad-based, first-hand information about the variety of tasks

DSMs may perform in any California district.   I and two staff members individually observed DSMs for a

period of approximately two to four hours. During these observations, we asked the DSM questions

about his/her job following a written site visit interview protocol. Site visits were conducted between

November 19 and November 27, 2013. Table 2 provides the details of these site visits.

Table 2: Site Visits Conducted

District ID	District Location	Division Name	Date	Time
7292	Phoenix E, AZ	SILVER SANDS	11/19/13	11:30am-3:45pm
7158	Phoenix NW, AZ	SILVER SANDS	11/20/13	12:15pm-3:45pm
7147	Las Vegas W, NV	SILVER SANDS	11/27/13	9am to 12:50pm
7162	Las Vegas, NV	SILVER SANDS	11/27/13	2:45pm to 6pm
7635	Portland SE, OR	GOLDEN LIGHTS	11/19/13	9:30am to 2:45pm
7508	Portland W, OR	GOLDEN LIGHTS	11/19/13	3:30pm to 8pm

17.   Based on information gathered through SME meetings, company documents and site visit observations and interviews, we developed a preliminary list of 153 sample tasks which captured the range of tasks DSMs may perform. Based on our prior experience with observational studies and on information gathered in site-visits, we did not attempt to develop a list of every single task that a DSM might perform; it would be impossible to identify all of the tasks DSMs perform before the fact in a single task list.   Consistent with established practice, the 153 tasks were divided into homogeneous groups of tasks called Task Areas, each Task Area consisting of tasks that are similar in function.[2]   This resulted in 19 Task Areas (17 Task Areas representing different content areas of the job and two Task Areas dividing driving tasks into Exempt Drive Time and Non-Exempt Drive Time[3]). Tasks within Task Areas were further differentiated as either "exempt" or "non-exempt" to enable analysis of the time DSMs spent performing exempt and non-exempt work. To facilitate this analysis, we made a preliminary sorting of tasks into "exempt" and "non-exempt" Task Areas based on our prior experience in overtime (misclassification) cases.

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[2] This is a common and well established practice used in conducting job analysis. The job is divided up into homogeneous clusters of tasks to make understanding the job easier and to identify tasks that are often performed together. In this study, we also grouped tasks that were homogeneous with respect to their exempt status.

[3] Exempt and Non-Exempt Drive Time was defined as time while driving from one place to another where the activity performed at the destination was determined to be exempt or non-exempt.

18.   Although I am not a legal expert and cannot offer a legal opinion regarding the exempt status of each task, classification of the tasks observed was necessary for the purpose of data analysis. To check the appropriateness of our preliminary sorting of tasks into exempt and non-exempt Task Areas, we sought the opinion of Avon defense counsel who are experienced in California wage and hour laws and misclassification cases. After a detailed discussion of tasks within each Task Area, defense counsel and I agreed upon the final sorting of tasks into exempt and non-exempt Task Areas. This work was completed before the observational study commenced. A final version of tasks and Task Areas can be found in Exhibit 3. Fourteen Task Areas were designated as exempt, and five Task Areas were designated as non-exempt.[4]

19.   Once the final set of 19 Task Areas was generated, we began preparations for conducting observations. First, we developed an observational protocol for all consultants to follow during their observations. The protocol included a script consultants read to DSMs to confirm their work schedules and their awareness of the job study, a script for consultants to read to DSMs at the beginning of the observation and FAQs to answer DSMs' questions, an interview form to collect information from DSMs before and after their observation, a list of tasks organized into the 19 Task Areas for coding tasks observed, and instructions for recording tasks observed and the duration of tasks for the entire shift.

20.   Next, we conducted a three-hour briefing with all five consultants who conducted observations (observers) to ensure uniform execution of the observational protocol and to provide observers everything they needed to conduct reliable and valid observations. All observers were trained in the proper use of observation materials and the observation protocol, and they were tested to ensure

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[4] Although more Task Areas were classified as exempt than non-exempt, there is no inherent bias in the results of the observations favoring exempt time. The Task Areas were created on the basis of the work performed and not on any preconceived idea that the number of categories must be the same. Observers record what they observe, whether it is exempt or non-exempt, and there is no bias in what an observer observes leading to a bias in finding more exempt tasks than non-exempt tasks performed. Time spent on exempt vs. non-exempt work is calculated on an aggregate basis, regardless of the number of categories of either classification.

their observational skills and accuracy. All consultants have advanced degrees in a related area and have significant experience conducting observations. At the conclusion of the briefing all observers knew the protocol, received a complete set of observation materials, understood "key terms" used by DSMs, and knew how to properly record information collected during the observation.

Sample Selection

21.   I determined that the observation of 30 DSMs out of a population of 98 active California DSMs (31%) would be sufficient for this study. The size of this group of DSMs is large enough to obtain a stable, reliable and valid picture of the range of actual tasks and activities DSMs perform in their jobs and the extent to which they vary in tasks performed and time spent on exempt and non-exempt work.

22.   Prior to the observer briefing, we developed a strategy for selecting DSMs for the observational study. We identified, through consultation with SMEs, six measureable characteristics of Avon districts that would be useful in achieving a diverse sample reflecting potential differences within the California DSM population: (1) division; (2) district sales volume; (3) number of sales leaders in the district; (4) number of sales representatives in the district; (5) order volume in the district; and (6) DSM tenure in position. Based on these six factors, we generated profiles of DSMs for each characteristic. These profiles were used as a guide to ensure that the study sample closely approximated the distribution of characteristics in the DSM population in California.

23.   As discussed further below, we followed an unbiased and scientific process for selecting DSMs for the observational study in order to create a sample that closely approximated the California DSM population and to produce reliable and valid study results. We selected DSMs from each of the 98 districts in California using a stratified random sampling procedure to ensure that the study sample mirrored the California population on all five characteristics. Table 3 below shows the high similarity between study sample characteristics and those of the population of California DSMs.

Table 3: Comparison of California DSM Population to DSM Sample

CA Population (N=98)			Observation Sample (n=30)		
Division	Count	%	Division	Count	%
AVANTI	17	17.3%	AVANTI	5	16.7%
FOOTHILL	11	11.2%	FOOTHILL	3	10.0%
INFINITI	13	13.3%	INFINITI	4	13.3%
PARADISE	16	16.3%	PARADISE	5	16.7%
PRESTIGE	20	20.4%	PRESTIGE	6	20.0%
RISING STAR	20	20.4%	RISING STAR	7	23.3%
SILVER SANDS	1	1.0%	SILVER SANDS	0	0.0%
Total	**98**	**100%**	**Total**	**30**	**100%**

Total Sales*	Count	%	Total Sales*	Count	%
Low (1307609 or less)	33	33.7%	Low (1307609 or less)	11	36.7%
Mid (1307610 to 1570234)	32	32.7%	Mid (1307610 to 1570234)	10	33.3%
High (1570235 or more)	33	33.7%	High (1570235 or more)	9	30.0%
Total	**98**	**100.0%**	**Total**	**30**	**100.0%**

*Current Avon total net sales in last 26 campaigns

Titled Leadership*	Count	%	Titled Leadership*	Count	%
Low (12 or less)	25	25.5%	Low (12 or less)	8	26.7%
Mid (13 to 17)	39	39.8%	Mid (13 to 17)	11	36.7%
High (18 or more)	34	34.7%	High (18 or more)	11	36.7%
Total	**98**	**100.0%**	**Total**	**30**	**100.0%**

*Titled leadership reps (UL, AUL, EUL, SEUL) currently on staff

Total Reps	Count	%	Total Reps	Count	%
Low (514 or less)	32	32.7%	Low (514 or less)	10	33.3%
Mid (515 to 623)	33	33.7%	Mid (515 to 623)	10	33.3%
High (624 or more)	33	33.7%	High (624 or more)	10	33.3%
Total	**98**	**100.0%**	**Total**	**30**	**100.0%**

Total Orders	Count	%	Total Orders	Count	%
Low (8690 or less)	32	32.7%	Low (8690 or less)	11	36.7%
Mid (8691 to 10067)	33	33.7%	Mid (8691 to 10067)	9	30.0%
High (10068 or more)	33	33.7%	High (10068 or more)	10	33.3%
Total	**98**	**100.0%**	**Total**	**30**	**100.0%**

Tenure with Company*	Count	%	Tenure with Company*	Count	%
Low (2.13 or less)	33	33.7%	Low (2.13 or less)	9	30.0%
Mid (3.13 to 7.42)	33	33.7%	Mid (3.13 to 7.42)	11	36.7%
High (8.42 or more)	32	32.7%	High (8.42 or more)	10	33.3%
Total	**98**	**100.0%**	**Total**	**30**	**100.0%**

*As of 1/1/14

24.   Once DSMs were selected for the observational study, we scheduled observations such that they were evenly distributed across each of the five days of the week. The 30 observations were conducted on weekdays between January 29 and April 9, 2014.

<div align="center">**Observational Study Data Collection**</div>

Controlling for the Effects of Being Observed

25.   Observational studies require a trained observer to shadow an employee for a period of time and record the tasks and activities performed by the employee during this period. Because simply observing someone may alter his or her behavior, sometimes called the "Hawthorne Effect" after an experiment conducted in the Hawthorne Works factory in the 1920's, we developed four controls in our observation protocol to minimize or eliminate this potential effect. First, we developed a detailed communication process and set of communication scripts to minimize concerns managers we observed might have about being watched. Specifically, these scripts stated the purpose of the study, gave assurances that DSMs were not being evaluated on their performance or the performance of their district, and assured DSMs that information from the observation would not be shared with their supervisor or manager. The scripts also encouraged DSMs to do what they normally do and not to do anything different or special because the observer was present. Several scripts were developed: (1) a script for Avon leadership to use to inform Division Managers about the study and ask for their assistance informing selected DSMs in their division about the study, (2) a script for Division Managers to use to schedule a call with Avon leadership, themselves and each selected DSM, (3) a script for Avon leadership and Division Managers to use to notify selected DSMs about the study and to let them know that a consultant would be contacting them shortly to confirm their work schedules for the upcoming weeks and to arrange a day in which the consultant can conduct the observation, (4) a script for a consultant to use to confirm the DSM's schedule and arrange for a date to observe, and (5) a script for

the observer when meeting the DSM on the day of the observation to repeat assurances given

previously and to ask the DSM to perform his/her duties as he/she normally would.

26.   A second control consisted of instructing observers as part of the observation protocol

to stand or sit (where appropriate) a few feet away from the DSM when conducting the observation and

whenever practical out of the DSM's sight (e.g., behind or off to the side of the DSM) in order to

minimize awareness of the observer's presence. Observers were also instructed to follow the DSM at a

distance of a few feet. When riding in a vehicle with the DSMs, observers were instructed to minimize

conversation with the DSM.

27.   A third control consisted of instructing observers to refrain from talking with the DSM in

general during the observation except for asking probing questions as required by the observation

protocol. Observers were required to ask specific questions when the DSM was engaged in a telephone

conversation that could not be heard or when the observer could not follow what the DSM was doing on

a specific task (e.g., the activity or the information the DSM was examining was unclear). This was

particularly important when the observer rode along in the DSM's vehicle in the field during the

observation. Otherwise, observers observed and recorded tasks silently.

28.   A fourth control consisted of instructing observers to maintain a "friendly" and

"professional" demeanor for the duration of the observation. This instruction was specifically designed

to put the DSM at ease.

29.   All observers were trained to conduct their observations in the manner described

above, and all observers followed the observation protocol as directed. It is my experience over 30

years of conducting observational studies that shortly after the start of the observation (e.g., after the

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first half hour), the employee who is being observed "habituates"[5] to the presence of the observer. I

have no reason to believe that anything different occurred during this observational study.

Conducting Observations

30.   Each observation began at the DSM's residence or agreed-upon meeting location within

a few minutes of the DSM's residence, so that the DSM's commute and tasks performed during the

commute could be observed.[6] Observers read a script aloud which repeated the assurances given

earlier and asked the DSM to perform his/her job as he/she normally would. Before the observation

began, the observer asked the introductory questions from the "Observation Information Sheet" to

learn a few things about the DSM's work experience and employment history and work completed from

home that day before the observation period. Then the observation began.

31.   Observers tracked each task performed and the duration of each task from the

beginning of the observation period to the time the DSM returned to their residence or meeting

location. Each task performed by the DSM was written down in detail on data collection sheets. Then

each observed task was compared to the sample tasks in the task list and coded as belonging to the Task

Area judged to have the best fit between the observed task and the sample tasks comprising that Task

Area. At the conclusion of the observation period, observers asked three additional questions: (1) "*Are*

you planning to do any work from home this evening (e.g., check reports, take phone calls)? If yes, what

work are you planning to do from home this evening and how much time do expect to spend working

from home this evening (time on each task)?" (2) "*Would you have done anything differently if I hadn't*

been here observing you? If yes, how would you have spent your time differently?" and (3) "*Think about*

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[5] Habituation is a psychological process in which exposure to repeated stimuli leads to a decreased behavioral response to the stimuli. In this case, the initial presence of the observer is a novel stimulus which may trigger a behavioral response from the DSM (e.g., nervousness or self-consciousness but may not alter what the DSM does on the job). After continued exposure over a period of time, the observer's presence becomes less obvious to the DSM and gradually fades into the background as the DSM's attention is drawn toward new stimuli in the worksite such as coordinating district events and answering questions from representatives.

[6] Some DSMs worked from an office within a few minutes of their home so the observation began at the DSM's office.

your overall experience in your current position and how you have spent your time. Was how you spent

your time today particularly unusual? If yes, how would you have spent your time differently if today

were not unusual?"

32.   The tasks observed and recorded on observers' data sheets were entered electronically

into a spreadsheet capturing all the text written by the observer and the time recorded for each task

was entered into a time tracking tool which summarized time spent in each of the Task Areas and in all

exempt (and non-exempt) Task Areas. An observation record was generated for each DSM for a total of

30 observation records in the study. Each observation record consists of a chronological listing of all

tasks performed by the DSM (and breaks and personal non-work activities) and the time spent on each

task during the observation period. The observation record also displays the Task Area assigned by the

observer to each task for the purpose of data analysis, and includes the DSM's answers to the observer's

questions asked before and after the observation period. Each observation record was independently

reviewed by a second (non-observer) consultant to ensure that each record was complete and coded

consistently and accurately according to Task Area definitions established prior to the initiation of

observations. Observation records were then analyzed following standard data analysis methods using

Microsoft Excel.

Observational Study Results

Variation in Work Performed

33.   Time spent performing tasks in each Task Area and across all exempt Task Areas and all

non-exempt Task Areas were computed for each DSM observed. Drive time was split into "exempt" and

"non-exempt" time proportional to the amount of time spent on exempt and non-exempt tasks at the destination.[7]

34.   Tables 4 and 5 below display the results of our analysis of time spent by DSMs performing work across the 19 Tasks Areas and the total time spent on exempt and non-exempt work. Table 4 shows the percent of time spent by Task Area and Table 5 shows the absolute time spent (i.e., hours and minutes) by Task Area. We found a great deal of variability in the tasks performed by DSMs during their workday. This can be seen by the difference between the minimum and maximum amounts of time spent by DSMs in each Task Area, showing the range of time spent across DSMs.   DSMs differed most with respect to tasks performed within four primary Task Areas. "Updating Product Knowledge and Sales Skills" went from 0.0% to 62.1% total time spent, a range of 62.1 percentage points, and from zero to 5 hours 37 minutes in absolute time. "Developing and Implementing Strategies for Growing Revenue" went from 0.0% to 44.2% total time spent, a range of 44.2 percentage points, and from zero to 4 hours 28 minutes in absolute time. "Promoting Avon and Recruiting Representatives" went from 0.0% to 35.7% total time spent, a range of 35.7 percentage points, and from zero to 3 hours 21 minutes in absolute time. "On-boarding New Representatives" went from 0.0% to 35.1% total time spent, a range of 35.1 percentage points, and from zero to 2 hours 41 minutes in absolute time. These results clearly indicate that individual DSMs spent very different amounts of time across the wide range of tasks involved in this job.

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[7] Because non-working commute time within a one-hour period is considered not to be compensable, this observed time was treated as non-work time for purposes of this observational study. If this time exceeded an hour, that amount was counted like drive time. However, even if we were to include this non-working commute time in the same manner as drive time, it would not change the analysis and my conclusions.

Table 4: Percent of Time Spent in Task Areas and in Total Exempt/Non-Exempt Work

	Task Area	E/NE[8]	Average	Min	Max	Range
1	Planning Recruiting Activities	E	**2.2%**	0.0%	12.7%	12.7%
2	Promoting Avon and Recruiting Representatives	E	**8.6%**	0.0%	35.7%	35.7%
3	Growing the Representative Base Through Others	E	**1.2%**	0.0%	5.2%	5.2%
4	Educating Representatives on Building their Sales and Recruiting Skills	E	**9.6%**	0.0%	29.7%	29.7%
5	Demonstrating Sales and Recruiting Activities to Representatives	E	**1.2%**	0.0%	14.9%	14.9%
6	Coaching and Mentoring Representatives in Marketing and Sales	E	**9.1%**	0.8%	24.6%	23.8%
7	Coaching and Mentoring Representatives in Recruiting	E	**3.6%**	0.0%	25.7%	25.7%
8	Facilitating Representatives' Orders and Customer Service	E	**7.4%**	0.4%	18.3%	17.9%
9	Developing and Implementing Strategies for Growing Revenue	E	**12.1%**	0.0%	44.2%	44.2%
10	Reviewing and Analyzing District Performance	E	**2.7%**	0.0%	12.2%	12.2%
11	Business Planning and Scheduling	E	**6.8%**	0.9%	16.2%	15.3%
12	Updating Product Knowledge and Sales Skills	E	**4.5%**	0.0%	62.1%	62.1%
13	Managing District Budget	E	**0.3%**	0.0%	1.8%	1.8%
14	On-boarding New Representatives	NE	**6.1%**	0.0%	35.1%	35.1%
15	Selling Products and Performing Sales Support Activities	NE	**2.0%**	0.0%	15.9%	15.9%
16	Maintaining and Securing Facilities and Equipment	NE	**3.1%**	0.0%	24.0%	24.0%
17	Performing Clerical Activities	NE	**3.5%**	0.2%	12.6%	12.5%
18	Managerial Drive Time	E	**13.2%**	0.0%	24.7%	24.7%
19	Non-Managerial Drive Time	NE	**2.8%**	0.0%	11.8%	11.8%

Total Time Exempt		82.5%	54.1%	96.2%	42.1%
Total Time Non-Exempt		17.5%	3.8%	45.9%	42.1%

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[8] E=Exempt, NE=Non-Exempt

Table 5: Absolute Time Spent in Task Areas and in Total Exempt/Non-Exempt Work
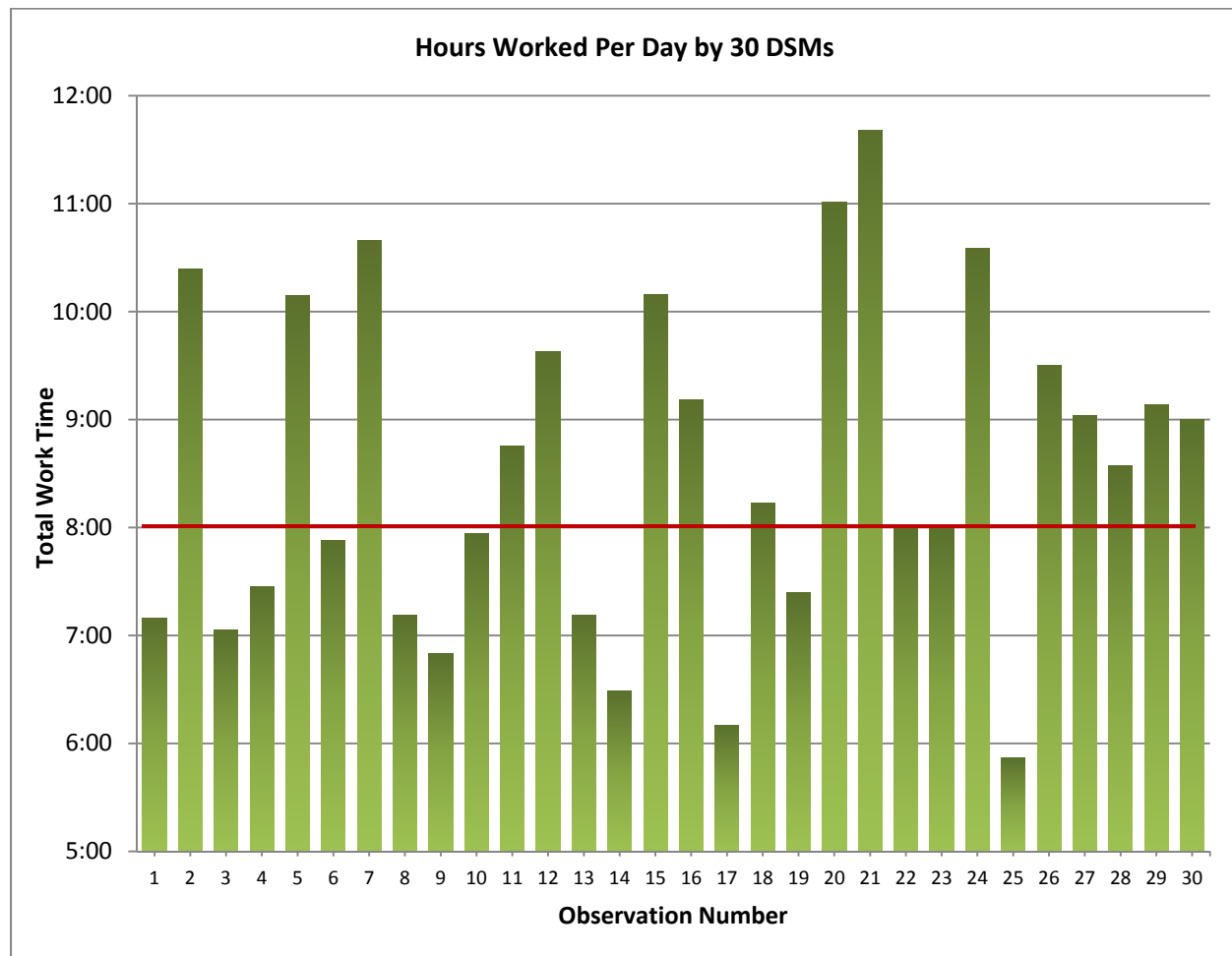
	Task Area	E/NE	Average	Min	Max	Range
1	Planning Recruiting Activities	E	**0:11:17**	0:00:00	1:02:30	1:02:30
2	Promoting Avon and Recruiting Representatives	E	**0:41:52**	0:00:00	3:21:30	3:21:30
3	Growing the Representative Base Through Others	E	**0:06:04**	0:00:00	0:22:10	0:22:10
4	Educating Representatives on Building their Sales and Recruiting Skills	E	**0:49:29**	0:00:00	2:35:10	2:35:10
5	Demonstrating Sales and Recruiting Activities to Representatives	E	**0:05:41**	0:00:00	1:03:10	1:03:10
6	Coaching and Mentoring Representatives in Marketing and Sales	E	**0:45:47**	0:04:20	1:57:10	1:52:50
7	Coaching and Mentoring Representatives in Recruiting	E	**0:17:53**	0:00:00	1:55:00	1:55:00
8	Facilitating Representatives' Orders and Customer Service	E	**0:36:08**	0:02:30	1:17:30	1:15:00
9	Developing and Implementing Strategies for Growing Revenue	E	**1:05:21**	0:00:00	4:28:50	4:28:50
10	Reviewing and Analyzing District Performance	E	**0:14:34**	0:00:00	1:03:10	1:03:10
11	Business Planning and Scheduling	E	**0:34:14**	0:04:30	1:28:30	1:24:00
12	Updating Product Knowledge and Sales Skills	E	**0:23:48**	0:00:00	5:37:00	5:37:00
13	Managing District Budget	E	**0:01:37**	0:00:00	0:12:40	0:12:40
14	On-boarding New Representatives	NE	**0:31:17**	0:00:00	2:41:20	2:41:20
15	Selling Products and Performing Sales Support Activities	NE	**0:09:39**	0:00:00	1:07:10	1:07:10
16	Maintaining and Securing Facilities and Equipment	NE	**0:15:33**	0:00:00	1:55:20	1:55:20
17	Performing Clerical Activities	NE	**0:18:04**	0:00:50	1:17:00	1:16:10
18	Managerial Drive Time	E	**1:09:18**	0:00:00	2:14:09	2:14:09
19	Non-Managerial Drive Time	NE	**0:15:03**	0:00:00	1:15:14	1:15:14
0	Non-Work Activities		**1:54:40**	0:32:10	5:37:50	5:05:40

Total Time Exempt	**7:03:03**	**4:20:06**	**10:21:24**	**6:01:18**
Total Time Non-Exempt	**1:29:37**	**0:16:12**	**4:01:44**	**3:45:32**
Total Work Time	**8:32:40**	**5:52:00**	**11:40:40**	**5:48:40**
Total Observation Time*	**10:27:20**	7:03:00	14:19:10	7:16:10

* Including Non-Work Activities

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35.   In addition to the four Task Areas that showed the most variation in time spent, three other Task Areas showed substantial variation in both percentages of time spent and in absolute time: "Educating Representatives on Building Their Sales and Recruiting Skills" (a range of 29.7 percentage points and from zero to 2 hours 35 minutes); "Coaching and Mentoring Representatives in Recruiting" (a range of 25.7 percentage points and from zero to 1 hour 55 minutes); "Maintaining and Securing Facilities and Equipment" (a range of 24 percentage points and from zero to 1 hour 55 minutes); and "Coaching and Mentoring Representatives in Marketing and Sales" (a range of 23.8 percentage points and from 4 minutes to 1 hour 57 minutes). Thus, eight of the 17 Tasks Areas (excluding Drive Time) show highly variable amounts of time spent on the same tasks. Only two of the 17 Task Areas showed consistency largely due the small amount of time spent in these two areas ("Growing the Representative Base Through Others" and "Managing District Budget."

36.   Table 5 also shows the length of the work day on the day observed. The shortest work day was 5 hours 52 minutes whereas the longest workday was 11 hours 40 minutes, indicating a nearly six-hour difference between two DSMs observed. The average length of the work day was 8 hours 32 minutes. Chart 1 below shows the total amount of work time for each of the 30 DSMs observed. The results show that eight of the 30 DSMs (26.7%) worked less than 8 hours during the observation period.

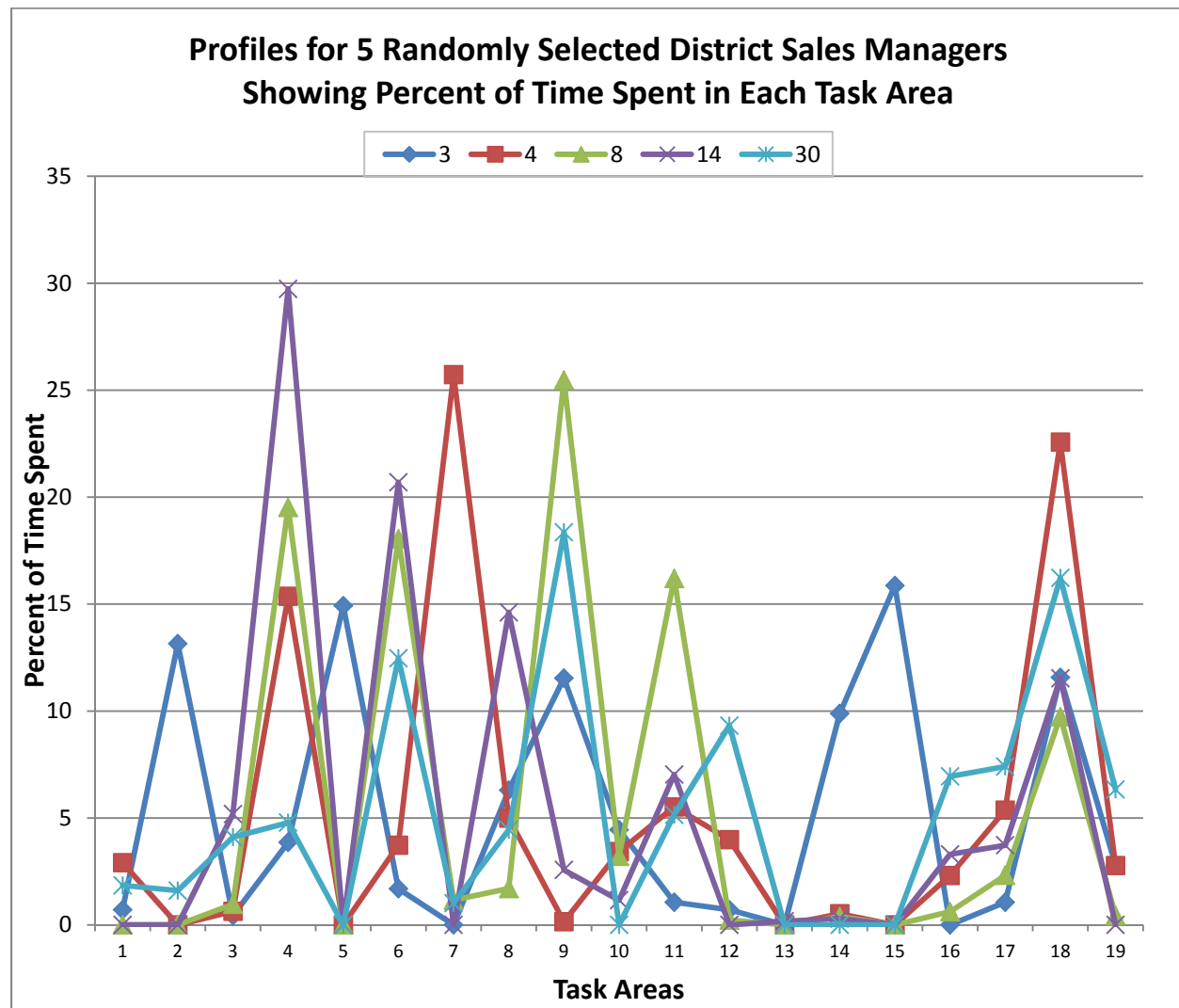**Chart 1: Total Time Worked for 30 DSMs**

37.   Tables 4 and 5 also show variation in the total amount of time spent on "exempt" work.
The lowest percentage of time a DSM spent performing exempt work was 54.1%, and the highest

percent of time spent was 96.2%, indicating that all DSMs spent the majority of their time performing

exempt work but that there was still a high level of variability -- a range of more than 42 percentage

points between the highest and lowest. In terms of absolute time, the least amount of time spent

performing exempt work was 4 hours 20 minutes, and the most amount of time spent performing

exempt work was 10 hours 21 minutes, a difference of over six hours. Clearly, these DSMs spend the

majority of their workday performing exempt tasks, but above that 50% line, there are significant differences from one DSM to another.
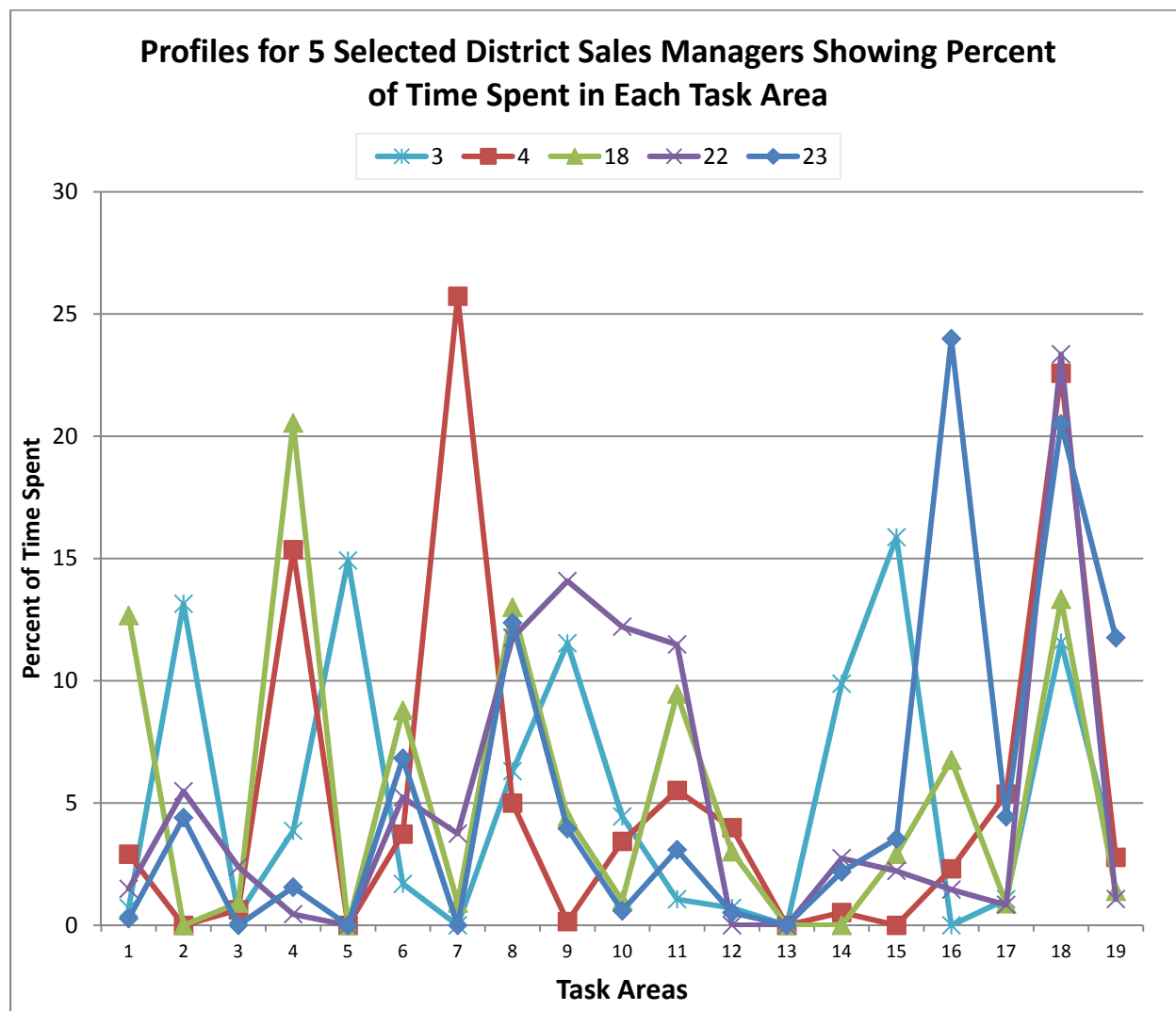
38.   Another way to illustrate the magnitude of variation among DSMs in time spent on tasks is to contrast time spent across the 19 Task Areas for even a small group of five DSMs *selected at random*.[9] Chart 2 below graphically illustrates how differently these DSMs spent their time. These five DSMs are profiled across the 19 Task Areas using the percentage of time spent in each Task Area. One DSM (#14) spent approximately 30% of his/her time in the area "Educating Representatives on Building their Sales and Recruiting Skills" whereas another DSM (#4) focused on "Coaching and Mentoring Representatives in Recruiting," and "Educating Representatives on Building their Sales and Recruiting Skills." Another DSM (#8) spent more than a quarter of his/her time performing tasks within "Developing and Implementing Strategies for Growing Revenue." This chart clearly shows that even within a small subset of DSMs you see significant variability. Overall, the degree of variability in time spent across Task Areas is such that it would be difficult to predict how one DSM spent his/her time based on the way any other DSM spent his/her time.

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[9] The point of selecting a small group of five DSMs at random is to show that *any* group of five DSMs are likely to show variability in the amount of time spent performing tasks across the 19 Task Areas.

Chart 2: Percent of Time Spent on Task Areas by Five Randomly Selected DSMs

39.   Chart 3 shows a different set of five DSMs who were selected to show the extent of DSM differences in time spent along Task Areas. These five DSMs show even greater differences in time spent across Task Areas than the five DSMs shown in Chart 2. DSM (#4) spent the largest portion of his/her time in the "Coaching and Mentoring Representatives in Recruiting whereas DSM (#23) spent considerable time on "Maintaining and Securing Facilities and Equipment." Again, even this small subset of DSMs reveals extensive variation in how DSMs spent their time during their workday.

Chart 3: Percent of Time Spent on Task Areas by Five Selected DSMs

Profiles for 5 Selected District Sales Managers Showing Percent of Time Spent in Each Task Area

40.   In addition to the variation in tasks performed and time spent performing work in different Task Areas, we also noted variation in how the DSMs spent non-work or personal time during the workday. The observations demonstrated that DSMs have discretion to engage in certain non-work or personal activities during the workday. Because the observer recorded every activity and duration of activities throughout the observation period, we recorded and summarized time spent on non-work activities such as breaks, running personal errands, dropping off and picking up children from school, and going to personal appointments. Table 6 below lists the non-work activities engaged in by DSMs

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and the duration of those activities.   This table shows that some DSMs spent a significant amount of

the workday on non-work activity (the amounts of time are shown in hours, minutes and seconds).

Table 6: Examples of Non-Work Tasks Performed by DSMs During Observations

Observation Number	Task	H:M:S
1	Break - breakfast.	0:17:20
1	Take call on iPhone - personal.	0:01:50
2	Place personal phone call.	0:01:00
3	Drive to pick up child from school.	0:27:40
5	Order drink.	0:09:20
7	Stand in line to purchase drink at Starbuck.	0:03:30
8	Check personal phone for voicemails (non-work related).	0:01:30
8	Order drink for self.	0:11:20
10	Drive to drop kids at school.	0:15:30
10	Drive to park to drop children off.	0:05:20
10	Drop children off at park.	0:01:50
10	Drop off child at Karate class.	0:01:50
11	Personal call to mom.	0:05:20
11	Personal family call.	0:02:10
29	Drive to pick-up daughter from school.	0:25:20
30	Drive to drop son off at school.	0:09:20

41.   A review of the observation records themselves reveals the high degree of variability in

the types of activities performed during the work day, the sequence of tasks performed during the work

day, the locations in which work was performed, and the dispersion of non-work activities at different

points during the work day. What these records make clear is that DSMs in California, as a group, have

no "regular" or common work routine, no regular or common place of work, no regular or common set

of work activities, and no regular or common amount of time spent working per day.

Table 7: Excerpt from Observation Record

Task Start	Task End	Period Time	Sub-Activity	Allocated Time	Task	Task Area
7:49:30	7:50:00	0:00:30		0:00:30	Approve District Assistant time sheet in Aviva.	13
7:50:00	7:50:40	0:00:40		0:00:40	Read emails.	11
7:50:40	7:51:10	0:00:30		0:00:30	Read email from manager asking DSM to bring materials to rally tomorrow.	9
7:51:10	7:55:50	0:04:40		0:03:30	Forward email [to District from LA Sales Center offering products to new reps].	6
			0:00:10	0:00:10	Alternate Activity: Log onto SMO/DMO to get email addresses for reps (to send email to remind them about rally).	11
			0:00:10	0:00:10	Alternate Activity: Review results from last campaign.	10
			0:00:50	0:00:50	Alternate Activity: Copy email addresses for email to send to reps to remind them about rally tomorrow).	11
7:55:50	7:57:00	0:01:10		0:01:10	Blow nose in kitchen.	0
7:57:00	7:59:30	0:02:30		0:02:30	[Send emails regarding reminder for rally to reps].	11
7:59:30	8:01:00	0:01:30		0:01:30	Log onto SMO/DMO to pull email addresses of reps (to forward email regarding new products).	4
8:01:00	8:02:10	0:01:10		0:01:10	Send email to reps [forwarding email regarding new product deals for reps].	4
8:02:10	8:02:50	0:00:40		0:00:40	Check personal email and respond.	0
8:02:50	8:04:30	0:01:40		0:01:40	Compose email to reps for other district to remind them about rally tomorrow [email won't send, retry].	11
8:04:30	8:05:30	0:01:00		0:01:00	Check junk email box and clear it (to try and get email to reps regarding rally event tomorrow to send).	11
8:05:30	8:08:50	0:03:20		0:03:20	Check on [DMO on activity to see plan and results and compare to documented results from last night on orders and note orders and sales and calculate the difference between actual orders to plan].	10
8:08:50	8:09:10	0:00:20		0:00:20	Check [no order activity on DMO] (to contact reps to encourage them to order).	9
8:09:10	8:10:20	0:01:10		0:01:10	Send [ecard to no-order reps as reminder].	9
8:10:20	8:11:10	0:00:50		0:00:50	Check order activity for Spanish reps and generate report (to identify who to contact to encourage them to order).	9
8:11:10	8:12:20	0:01:10		0:01:10	Send ecard to Spanish reps to remind them to order.	9

42.   The following is a narrative of a "day in the life" of three different DSMs in order to illustrate the full context of the work (and non-work) tasks performed in the course of a day by these DSMs.   One DSM's observation record is summarized in each paragraph below. It is clear from the summaries of the observation records that these DSMs differ in terms of the type and sequence of tasks performed, the types of non-work activities engaged in during the day, and the manner in which they choose to work with sales representatives in order to develop sales representative skills and motivate them to place orders.

43.   DSM #10.   The observation started at 8:17am at the DSM's home. The DSM dropped off her children at school and then returned home to retrieve inserts for "try-it" kits for potential Reps. She drove to meet with a new Rep at the Rep's home where she conducted a 48-minute on "on-boarding" meeting. She then drove to two different prospective Reps' homes to drop off materials. Next, she met a Sales Rep at Starbucks to conduct an "Achieve" meeting, but before the Rep arrived, she spent 30 minutes working at her laptop catching up on emails, sending texts to Reps and eating her lunch. Following the training, she drove to a Rep's home to discuss a plan which would allow another Rep to take over her customers until this Rep could return to work after a family tragedy. Then the DSM picked up her children at school, and while waiting for her children in the car, she worked on her laptop writing emails and returning emails and making several phone calls to Reps to discuss plans for recruiting and scheduling appointments. After picking up her children and dropping them off at a park for sports, she drove to Starbucks for another meeting for about an hour with another Rep to conduct a "business review" with the Rep. She also made phone calls and sent emails while at Starbucks. When the meeting concluded, she gave the Rep materials from the back of her car and then drove home and arrived at 6:28pm.

44.   DSM# 24. The observer met the DSM at the DSM's home at 7:59am. The DSM then drove to a local Starbucks where she set up her laptop and began reading and responding to texts and

emails, reviewing inactivity lists and DMO Performance Reports, and checking in with Leaders to see

how their events went. At 8:56am she called into a Division Conference Call which lasted for 44 minutes.

Then the DSM drove to a new Rep's house to deliver order books and to review and answer the Rep's

questions about payments. Next, the DSM picked up a Rep and drove with her to a Grocery Outlet and

attended a recruiting event which lasted about two and a half hours. While at the event the DSM

monitored the recruiting table, answered phone calls from other Reps, encouraged and congratulated

Reps for recruiting prospects, reviewed booklets with a Leader, told Reps about additional upcoming

events, talked to prospects about Avon products, checked emails, and reviewed reports, among other

things. Next, the DSM drove to two different Reps' houses to deliver materials, making multiple phone

calls to different Leaders and Reps along the way. At 4:02pm the DSM went into the Dollar Tree store to

purchase a Birthday Card for two Reps with upcoming birthdays, and then drove to a Pizza Restaurant to

lead a sales meeting. The DSM set up for the meeting and then started the sales meeting at 6:00pm.

She distributed samples to attendees, discussed new products, walked attendees through the new

product brochure and coached them on how to use the new Business Buzz document. The meeting

lasted about an hour, and then the DSM left at 7:05pm to drive home for 55 minutes, sending texts and

emails along the way.

45.   DSM #30. The observer met the DSM at 8:10am at the DSM's home. The DSM dropped

off her son at school and then drove to the Avon office. At the office, the DSM phoned a Leader to help

with an issue the Leader was having with a Rep. She also prepared letters to Reps to motivate them to

place orders. She prepared gift bags with brochures and ordering materials for Reps along with the

motivational letter. She also talked with a Rep from another district who was at the office and asked

about the sizing of kids' clothes. Next, she drove to nine different Reps' home to drop off the gift bags

she created and talked with Reps who were at home to motivate them to place an order. She left the

bags at the homes of Reps who were not at home. She drove to Starbucks where she checked email,

registered for a webinar, updated the district Facebook page and called leads to recruit them to Avon.

She then ate lunch. After lunch, she stopped at two more Reps' homes to drop off the gift bags and

then returned to the office. At the office she checked her email, sent out emails to Reps encouraging

them to place orders before the deadline, sent emails to Reps encouraging them to resolve debt issues

so they can place new orders, and made welcome calls to new Reps. Then she set-up the office for a

company-wide webinar and greeted Reps as they arrived. Following the webinar, the DSM recapped

important points in the webinar. She talked to Reps and Leaders individually to resolve various issues

and helped them plan future events and gather appropriate materials for their events. She led several

Reps through the content of the new appointment kit and answered questions. She cleaned up the

office and left the office to drive home. She picked up her son along the way and arrived at her home at

7:31pm.

Summary and Conclusions

Variability in Work Performed

46.   This observational study was conducted to identify the tasks and activities actually

performed by Avon DSMs in California. In total, we observed DSMs for more than 313 hours and

documented, down to the second, 4,393 individual tasks being performed. We found substantial

variation in the amount of time DSMs spent in each Task Area comprising the job and in the total

amount of time spent performing exempt work. When we reviewed the tasks the DSMs reported they

had performed before and after work, we also found variability in tasks performed during these periods,

which is consistent with what we found when we observed the DSMs. Because a large percentage of

the total number of active California DSMs was included in our observational study, the results of our

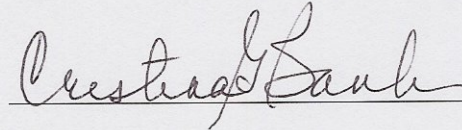study are highly generalizable to the remaining DSMs in California.

47.   In sum, our results show that there is no "typical" Avon DSM. Comparisons among

DSMs (whether in small sets of five or the whole group) clearly show how differently DSMs perform

their job one DSM to another. Knowing how one DSM performed his/her job does not enable us to

predict how any other DSM performed his/her job. Thus, the only way to know what percentage of a

particular DSM's time is spent on exempt work is to conduct an individual analysis of that DSM.

48.   I also conclude that despite the variability in the specific tasks performed person to

person, all DSMs spent the majority of their time performing exempt tasks.

I have been compensated at the rate of $600/hour for my work in this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21st day of January, 2015 at Orinda, California.

CRISTINA G. BANKS, Ph.D.